



Susan M. Sharko
Partner
susan.sharko@faegredrinker.com
+1 973 549 7350 direct

Faegre Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey 07932
+1 973 549 7000 main
+1 973 360 9831 fax

October 17, 2024

Honorable Rukhsanah L. Singh, U.S.M.J
United States District Court
Clarkson S. Fisher Building & US Courthouse
402 East State Street
Trenton, NJ 08608

Re: *In re: Johnson & Johnson Talcum Powder Products, Marketing, Sales Practices, and Products Liability Litigation*
Case No.: 3:16-md-02738-MAS-RLS

Dear Judge Singh:

Pursuant to the Court's request for bi-monthly reports, the parties jointly offer the following updates on recent MDL activities.

- **Status of Bankruptcy (*In re Red River Talc, LLC*):**
 - On October 10, 2024, the Texas Bankruptcy Court denied motions by the Coalition for Justice for Talc Claimants ("Coalition") and the U.S. Trustee's office and others to transfer the bankruptcy to the District of New Jersey. The Bankruptcy Court's administrative stay expired by its own terms at midnight on October 11, 2024. A hearing has been scheduled for October 21, 2024 to hear argument/evidence and announce a decision on the Debtor's pending application for a temporary restraining order ("TRO") of all further litigation that may adversely impact the Debtor's estate, which includes all claims that use of Johnson & Johnson's talc-based products resulted in ovarian and gynecological cancer. It is the Defendants' position that the TRO would not include the motions to remove Beasley Allen from the PSC and to disqualify Beasley Allen.
 - On September 21, 2024, the Coalition has filed Motion to Dismiss the Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b). The Debtor has not yet responded.

Honorable Rukhsanah L. Singh,
U.S.M.J

- 2 -

October 17, 2024

- **Motion to Remove Beasley Allen from the PSC**

- On September 20, 2024 the Johnson & Johnson Defendants filed a Motion to Remove Beasley Allen from the Plaintiffs' Steering Committee (ECF 33290). The motion is currently set for November 4, 2024, and it has been referred to Judge Singh. It is Defendants' position that the motion should proceed regardless of the Texas Bankruptcy Court's decision on Debtor's pending application for a TRO. It is further the position of the Defendants that as a matter of law, the prior automatic stay (and any subsequent extension of that stay) does not enjoin the motion, nor the motion for disqualification of Beasley Allen and Andy Birchfield, as their resolution does not adversely impact the Debtor's estate. Beasley Allen requested and the Court granted an extension of the deadline to respond to the motion until October 25, 2024, with a corresponding extension of Johnson & Johnson's reply deadline from October 28 to November 1, 2024 (ECF 33334).

- **Motion for the Disqualification of Beasley Allen and Andy Birchfield – fully briefed:**

- On July 19, 2024, this Court entered an order directing the parties to show cause why the MCL Court's findings of fact and conclusions of law should not be adopted (ECF 32984). On July 25, 2024, Defendant J&J and LLT Mgt. filed their response to the Court's July 19, 2024 Show Cause Order (ECF 33026). On August 5, 2024, Beasley Allen submitted a responsive brief (ECF 33065). On August 12, 2024, Defendants filed their Supplemental Reply to the Court's July 19, 2024, Show Cause Order Explaining Why the Court Should Not Adopt the State MCL Judge's Findings of Fact and Conclusions of Law on Their Motion to Disqualify Beasley Allen from This Litigation (ECF 33084).

- **The first case or cases to be tried:**

- On September 5, 2024, the PSC submitted a letter requesting the *Judkins* and *Rausa* cases be consolidated for the first trial (ECF 33260). Defendants wrote to the Court on September 6th (ECF 33263) objecting to the PSC's request to consolidate multiple cases

Honorable Rukhsanah L. Singh,
U.S.M.J

- 3 -

October 17, 2024

for the first trial and asking the Court to direct the PSC to select one of the two cases, consistent with Judge Wolfson's prior ruling on the issue. Defendants wrote to the Court again on September 13th (ECF 33274) to request the Court's position before submitting briefing. On September 17, 2024, Judge Shipp denied PSC's request for a consolidated trial and ordered the PSC to select a single case to be tried as the first bellwether no later than September 24, 2024 (ECF 33279). As the administrative stay has expired, it is Defendants' position that the PSC should immediately identify the case it selects to be tried as the first bellwether. In light of the pending application by Defendants for a TRO, set to be heard and decided on October 21, 2024, and Defendants' companion Preliminary Injunction which is anticipated to be heard soon thereafter, it is the Plaintiffs' position that the Court should hold in abeyance any further rulings impacting the bellwether dates.

- **Hearing on one of the R. 702 Motions:**

- On September 5, 2024, Defendants wrote to the Court (ECF 33253) regarding R. 702 motions to request a live hearing on Defendants' Motion to Exclude Plaintiffs' Experts' Asbestos-Related Opinions (ECF 33012), particularly as it relates to Dr. William Longo, with cross examination and the ability for Defendants to bring up to two rebuttal witnesses. Plaintiffs oppose Defendants' request as stated, but if a hearing on all pending *Daubert* motions would assist the Court, Plaintiffs stand ready to participate.

- **Pending R. 702 Motions – fully briefed**

- On July 23, 2024, Plaintiffs filed motions to exclude the geology opinions of Drs. Poulton and Webb (ECF 32996); exclude the opinions of Dr. Sutcliffe (ECF 32998); exclude the opinions of Drs. Finan, Saenz, and Holcomb (ECF 32999); exclude the opinions of Dr. Permuth (ECF 33001); exclude the opinions of Drs. Longacre and Felix (ECF 33002); exclude the opinions of Drs. Sanchez, Wylie, and Su (ECF 33006); exclude the opinions of Dr. DiFeo (ECF 33010); exclude the opinions of Dr. Kornak (ECF 33011); and exclude the opinions of Dr. Boyd (ECF 33060). Plaintiffs also filed a Response to the Court's April 30, 2024 Memorandum and Order Regarding Judge Wolfson's *Daubert* Opinion on General Causation (ECF 33009).

Honorable Rukhsanah L. Singh,
U.S.M.J

- 4 -

October 17, 2024

- On July 23, 2024, Defendants filed motions to exclude the opinions of Drs. Clarke-Pearson with respect to Ms. Rausa, Ms. Converse, and Ms. Newsome (ECF 33007); exclude the opinions of Dr. Wolf with respect to Ms. Bondurant, Ms. Gallardo, and Ms. Judkins (ECF 33003); exclude the opinions of Drs. Kessler, Plunkett, Sage, and Newman (ECF 33000); exclude the opinions of Dr. Godleski (ECF 33004); exclude the opinions Plaintiffs' experts regarding alleged heavy metals and fragrances (ECF 33005); exclude Plaintiffs' experts' general causation opinions (ECF 33008); exclude Plaintiffs' experts' opinions regarding biological plausibility/mechanism (ECF 33013); and exclude Plaintiffs' experts' asbestos-related opinions (ECF 33012).
- On August 22, 2024, the parties filed their Oppositions to the *Daubert* Motions filed on July 23, 2024.
- On September 5, 2024, the PSC filed a supplemental brief and affidavit (ECF 33252) without leave of Court to their Opposition to Defendants' Motion to Exclude Plaintiffs' Experts' General Causation Opinions. On September 20, 2024, Defendants filed a Motion to Strike the PSC's Supplemental Brief and the Affidavit of Dr. David Mutch (ECF 33291).

● **Defendants' Motion for Summary Judgment:**

- Per Order of July 22, 2024 (ECF 32991), J&J and LLT filed their Motion for Summary Judgment on August 23, 2024 (ECF 33142-33145 in the main docket, copies filed on individual dockets for the six involved cases). On September, 13, 2024, the PSC requested an extension of the page limit for their Opposition brief (ECF 33275). The Court granted the PSC an additional 35 pages for their Opposition brief on September 13th (ECF 33276). On September 23, 2024, the PSC filed their Opposition to Defendants' Motion for Summary Judgment (ECF 33293).

Johnson & Johnson's reply brief to their motion for summary judgment was due on October 11th while the Bankruptcy Court's administrative stay was in place. As that stay has now expired, Defendants filed their reply brief on October 16, 2024 (ECF 33369).

Honorable Rukhsanah L. Singh,
U.S.M.J

- 5 -

October 17, 2024

- **The PSC's Motion to Compel Defendants to produce invoices for all expert work relating to talc claims (ECF 33052) – fully briefed:**
 - On August 1, 2024, the PSC filed a letter seeking to compel Defendants to produce invoices for all expert work relating to talc claims, whether related to this MDL or not (ECF 33052). On August 1, 2024, Defendants filed a letter in response (ECF 33053) noting the PSC's "motion" is procedurally improper under the Local Rules as it is not actually a motion. On August 9th, the Court instructed the parties to meet and confer no later than August 20th (ECF 33077). If the parties remain at an impasse after that meeting, the Court ordered Defendants to file their Opposition by August 27th, and the PSC to file their Reply by September 4th. On August 19th, the parties met and conferred on the issue but were unable to resolve the dispute. Defendants filed their Opposition to the motion on August 27th (ECF 33187). The PSC filed their Reply on September 4, 2024 (ECF 33232).
- **Defendants' Motion to Strike Rebuttal Expert Report of Dr. Elizabeth Stuart (ECF 33038) – fully briefed:**
 - On July 30, 2024, Defendants filed a Motion to Strike Rebuttal Expert Report of Dr. Elizabeth Stuart (ECF 33038). Plaintiffs' Opposition was filed on August 20, 2024 (ECF 33102). Defendants' Reply was filed on August 27, 2024 (ECF 33189).
- **The PSC's Motion to Establish a Census (ECF 32931) – fully briefed:**
 - On July 10, 2024, the PSC filed a Motion for the Entry of an Order to Establish a Census and Require the Provision of Data by Persons with Unfiled Claims/Cases to Confirm the Plaintiff Suffers from Epithelial Ovarian Cancer, Fallopian Tube Cancer, or Primary Peritoneal Cancer (ECF 32931). Defendants' Opposition was filed July 19, 2024 (ECF 32985). Plaintiffs' Reply to Defendants' Opposition was filed July 29, 2024 (ECF 33032).
- **Defendants' Objections to the Special Master's Order of July 1, 2024, regarding inspection of Dr. William Longo's laboratory (ECF 32872) – fully briefed:**

Honorable Rukhsanah L. Singh,
U.S.M.J

- 6 -

October 17, 2024

- On June 17, 2024, Special Master Schneider denied Defendants' Motion to Compel the Inspection of Dr. William Longo's Laboratory (ECF 32826). Defendants filed an objection to the Special Master's Order on July 1, 2024 (ECF 32872). Plaintiffs' Opposition to Defendants Objections to the Special Master's Order was filed on July 22, 2024 (ECF 32992). Defendants filed their Reply on July 29, 2024 (ECF 33035).
- **Defendants' Objections to the Special Master's Order of August 20, 2024, regarding compelling Mr. Hess to answer deposition questions (ECF 33103, 33104) – fully briefed:**
 - The deposition of Mr. Hess occurred on July 10, 2024. The PSC raised objections to the scope of the inquiry of Mr. Hess at the beginning of the deposition. The Special Master heard argument from the parties, ruled on the objections, and provided instructions for the scope of questions to be asked the witness. It is the PSC's position that the deposition proceeded in keeping with Special Master Schneider's orders. On July 22, 2024, Defendants filed a Motion to Compel Hess's testimony and asked for Sanctions (ECF 32993- 26). Plaintiff's filed opposition on August 1, 2024 (ECF 33056). Paul Hess, through his personal counsel, filed opposition on August 1, 2024 (ECF 33058). Defendants filed their reply on August 2, 2024 (ECF 33057). The matter was heard by Special Master Schneider on August 5, 2024. On August 6, 2023, Special Master Schneider granted in part and denied in part Defendants' motion (ECF 33067).
 - Defendants objected to Special Master Schneider's order on August 20, 2024 (ECF 33103, 33104). The PSC filed their Opposition to Defendants' Objections to the Special Master's Order on September 3, 2024 (ECF 33227). Counsel for Mr. Hess separately filed an Opposition on September 3, 2024 (ECF 33228). Defendants filed their Reply on September 9, 2024 (ECF 33268).
- **Defendants' Objections to Special Master's Order of July 9, 2024, regarding subpoenas served on Beasley Allen Law Firm, Smith Law Firm, and Ellington Management Group (ECF 33061) – fully briefed:**
 - On May 20 and 21, 2024, Defendants filed Notices of Intent to Serve Subpoenas on the Beasley Allen Law Firm (ECF 32201), Ellington

Honorable Rukhsanah L. Singh,
U.S.M.J

- 7 -

October 17, 2024

Management Group (ECF 32215), and the Smith Law Firm (ECF 32226). On May 30, 2024, the Plaintiffs Steering Committee filed a Motion to Quash or for Protective Order regarding these subpoenas (ECF 32483). Also on May 30, 2024, the Beasley Allen Law Firm separately filed a Motion to Quash and/or for Protective Order concerning the subpoena directed to the Beasley Allen Law Firm (ECF 32445). On June 3, 2024, Allen Smith and the Smith Law Firm filed a Motion to Quash the Subpoena directed to them (ECF 32603). Defendants filed one opposition to all three motions on June 17, 2024 (ECF 32827). Beasley Allen served their reply brief on June 24, 2024 (ECF 32858). All three motions were heard on July 1, 2024 in a hearing conducted by Special Master Schneider. On July 9, 2024, Special Master Schneider granted all three Motions to Quash (ECF 32926).

- On July 21, 2024 Defendants J&J and LLT Mgt. filed their Notice of Objections to Special Master Order No. 25 (ECF 32987). On August 5, 2024, responses in opposition to the Objection were filed by Beasley Allen (ECF 33061); the PSC (33062); and the Smith Law Firm (ECF 33064). On August 12, 2024, Defendants filed their Reply (ECF 33085). On August 26, 2024, Defendants filed a letter apprising the Court of additional relevant authority (ECF 33171). On September 27, 2024, Defendants filed a letter informing the Court of Judge Brian Martinotti's decision in *MSP Recovery Claims Series, LLC v. Sanofi-Aventis U.S. LLC*, Docket No. 2:18-cv-02211 (ECF 33306).
- **Defendants' proposed final dismissal order listing 2016-2017 cases subject to the June 11th PPF OTSC which failed to show good cause to the Court (ECF 32980):**
 - On June 11, 2024, Your Honor entered Defendants' Order to Show Cause why the cases listed in Exhibit A attached to the Order should not be dismissed with prejudice for their failure to provide Defendants with Plaintiff Profile Forms (ECF 32811). The Plaintiffs subject to the Order had until July 2, 2024, to show cause why their case should not be dismissed with prejudice. On July 17, 2024, Defendants filed a final dismissal order listing 2016-2017 cases subject to the June 11th OTSC which failed to show good cause to the Court (ECF 32980). The PSC has no objection to the order as submitted by Defendants on

Honorable Rukhsanah L. Singh,
U.S.M.J

- 8 -

October 17, 2024

July 17, 2024 (ECF 32980). The Defendants request that the final dismissal order be entered.

- **Defendants' proposed PPF OTSC filed on July 1st (ECF 32868):**
 - Defendants filed an OTSC on July 1st (ECF 32868) regarding cases filed and/or transferred to this MDL in 2020 which remain deficient in serving PPFs. The cases listed on the July 1st OTSC were previously listed to the Court on the May and June PPF Reports (ECF 32127 & ECF 32599). Defendants respectfully request the July 1st OTSC be entered at the Court's earliest convenience.
- **Defendants' proposed PPF OTSC filed on September 3rd (ECF 33224):**
 - Defendants filed an OTSC on September 3rd (ECF 33224) regarding cases filed and/or transferred to this MDL from 2021 to September 1, 2023 which remain deficient in serving PPFs. The cases listed on the September 3rd OTSC were previously listed to the Court on the July and August PPF Reports (ECF 32869 & ECF 33055). Defendants respectfully request the September 3rd OTSC be entered at the Court's earliest convenience.
- **PPF OTSC entered on August 15, 2024 (ECF 33096):**
 - On August 15, 2024, Your Honor entered Defendants' Order to Show Cause regarding PPF deficiencies (ECF 33096). Plaintiffs subject to the OTSC had until September 5, 2024, to show cause why their case should not be dismissed with prejudice. Defendants filed replies (ECF 33270; ECF 33269; ECF 33265; ECF 33272; Case No. 3:19-cv-12142, ECF 9; Case No. 3:18-cv-11691, ECF 10) to certain Plaintiffs' responses to the OTSC which requested additional time to serve discovery, dismiss the case without prejudice, or delay dismissal until after a motion to withdraw as counsel is decided. Defendants will file a final dismissal order listing the cases subject to the August 15th OTSC which failed to file a PPF and show good cause to the Court.
- **Defendants' Motion to Dismiss Class Action Complaint in *Love* (Case No. 3:24-cv-06320, Doc. 47) – fully briefed:**
 - On July 11, 2024, Defendants filed a Motion to Dismiss Class Action Complaint in the *Love* matter (Case No. 3:24-cv-06320, ECF 47).

Honorable Rukhsanah L. Singh,
U.S.M.J

- 9 -

October 17, 2024

Plaintiffs filed their Opposition to the Motion to Dismiss on July 22, 2024 (Case No. 3:24-cv- 06320, ECF 48). On July 29, 2024, Defendants filed their Reply in Support of their Motion to Dismiss (Case No. 3:24-cv- 06320, ECF 50).

- **Defendants' Motion to Dismiss the Complaint in *Bynum* (Case No. 3:24-cv-07065, ECF 11):**

- On August 21, 2024, Defendants filed a Motion to Dismiss the *Bynum* Complaint seeking certification of a medical monitoring class (Case No. 3:24-cv-07065, ECF 11). On August 30, 2024, the Parties entered into a Stipulation to Extend Time for the Plaintiffs to Respond to the Motion to Dismiss or file an Amended Complaint by September 26, 2024 (Case No. 3:24-cv-07065, ECF. 12). The Court granted that stipulation the same day (Case No. 3:24-cv-07065, ECF 13). Plaintiffs did not file a Motion to Dismiss or an Amended Complaint by September 26, 2024, because of the Stay Order. It is Defendants' position that given that there is no longer any stay and the deadline has passed, Plaintiffs should file any opposition forthwith or seek further relief. It is Plaintiffs' position that the Stay Order remained in effect through midnight of October 11, 2024, prohibiting further responsive pleadings or filings. As previously stated, Judge Lopez has agreed to entertain and rule upon Defendants' application for TRO on October 21, 2024, which should provide further guidance on future deadlines and relief.

- **Defendants' Omnibus Motion for Summary Judgment in the matters of *Williams* (Case No. 3:19-cv-18778) and *Hill* (Case No. 3:18-cv-8344) – now fully briefed:**

- On June 18, 2021, Defendants filed an Omnibus Motion for Summary Judgment (ECF 22865) regarding the cases of *Williams* (Case No. 3:19-cv-18778); *Hill* (Case No. 3:18-cv-8344); *Scroggins* (Case No. 3:18-cv-12766); and *Landreth* (Case No. 3:17-cv-11788). Plaintiff *Hill* filed Opposition to the motion on July 9, 2021 (ECF 23518); Plaintiff *Williams* filed Opposition to the motion on July 9, 2021 (Case No. 3:19-cv-18778, ECF 24); Plaintiff *Landreth* filed Opposition to the motion on July 9, 2021 (Case No. 3:17-cv-11788, ECF 25); and Plaintiff *Scroggins* filed Opposition to the motion on July 9, 2021 (Case No. 3:18-cv-12766, ECF 43). Defendants filed their Reply as to *Williams*, *Hill*, and *Scroggins* on July 21, 2021 (ECF

Honorable Rukhsanah L. Singh,
U.S.M.J

- 10 -

October 17, 2024

23977). Defendants withdrew the motion, without prejudice, as to *Landreth* on September 12, 2023 (ECF 27954).

- Pursuant to the Court's request that an unredacted copy of the Omnibus Motion for Summary Judgment be filed, Defendants refiled the motion on November 8, 2023 (ECF 28668). On December 7, 2023, the Court denied Defendants' motion as to *Scroggins* only (Case No. 3:18-cv-12766, ECF 46). The motion remains pending as to *Williams* and *Hill*.

Status of Other Matters

- **Plaintiffs' Subpoena to Public Library of Science (PLOS):**

- On March 20, 2024, the PSC served the Public Library of Science (PLOS) with a subpoena for information related to a manuscript submitted by Plaintiffs' expert Dr. Saed to PLOS in 2020.
- On April 12, 2024, Counsel for PLOS served an objection to the subpoena claiming privilege and confidentiality and attaching to the objection a Privilege Log on counsel for the Plaintiffs.

- **Plaintiffs' Subpoena to Analysis Group LLC:**

- On June 11, 2024, the PSC served Analysis Group LLC with a subpoena for information related to Defendants' expert Dr. Kathleen Sutcliffe and her work on this litigation. The Defendants view the subpoena as overbroad, raising issues of financial disclosures for all experts in the MDL. The parties will meet and confer on the issues.

- **CMO 9 Notices:**

- On August 14, 2024, Defendants filed an Order to Show Cause (ECF 33089) why cases listed on Exhibit A should not be dismissed with prejudice for their failure to either file a Notice of Inability to Substitute ("NIS"), move to substitute the proper party plaintiff, or file an amended complaint by July 12, 2024, pursuant Paragraphs 2 and 3 of the Court's May 15, 2024, Order Regarding CMO 9 Notices (ECF 32181). Since that time, over 100 cases listed on Exhibit A attached to the proposed OTSC have filed an NIS. Defendants will

Honorable Rukhsanah L. Singh,
U.S.M.J

- 11 -

October 17, 2024

provide the Court with an updated list of cases which failed to file an NIS and should be subject to the OTSC.

• **New Jersey Proceedings Before Judge Porto:**

- Depositions of all expert witnesses in the *Carl* and *Balderrama* matters have been completed.
- On August 8, 2024, Defendants filed a Motion for Leave to File an Interlocutory Appeal of the Trial Court's July 19, 2024, Opinion and Order regarding the denial of Defendants' Motion to Disqualify Beasley Allen. On August 19, 2024, Beasley Allen filed their Opposition. On August 26, 2024, Defendants filed a Motion for Leave to File Reply Brief. Beasley Allen had until September 6, 2024, to file Opposition to the Motion for Leave to File Reply Brief but no Opposition was filed. On September 20, 2024, the Motion for Leave to File a Reply Brief was granted. Also on September 20th, Chief Judge of the Appellate Division, the Honorable Thomas W. Sumners, Jr., granted Defendants' Motion for Leave to File an Interlocutory Appeal. Defendants' brief is due on October 24, 2024, Beasley Allen's brief in response is due November 25, 2024, and Defendants' reply brief is due on December 2, 2024. The matter is docketed at AM-000215-24.
- On August 16, 2024, Defendants filed their *Accutane* and dispositive motions in *Carl* and *Balderrama*. On September 6, 2024, the Court moved the deadline for responsive briefs to be filed to September 20, 2024, with reply briefs to dispositive motions due by October 1, 2024 at the request of Plaintiffs' counsel. Defendants will file their reply brief on October 18, 2024.
- Plaintiffs did not file any *Accutane* or dispositive motions.

Honorable Rukhsanah L. Singh,
U.S.M.J

- 12 -

October 17, 2024

Thank you for your attention to these matters.

Respectfully,

/s/_____
Susan M. Sharko

SMS/scg

cc: Leigh O'Dell, Esq. (via email)
Michelle Parfitt, Esq. (via email)
All Counsel (via ECF)